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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/797,619	03/11/2004	Akihisa Nagami	62807-172	4743
<div>7590 11/26/2010</div> <div>MCDERMOTT, WILL & EMERY</div> <div>600 13th Street, N.W.</div> <div>Washington, DC 20005-3096</div>				
EXAMINER				
MCADAMS, BRAD				
ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/797,619

Applicant(s)

NAGAMI ET AL.

Examiner

ROBERT B. MCADAMS

Art Unit

2456

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 August 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 3-14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 3-14, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to the response filed on August 26, 2010.
2. Claims 1, 3-14, 16 and 17 are pending.

Response to Arguments

3. Applicant's arguments filed 8/26/2010 have been fully considered but they are not persuasive. The Applicant argues *Klein* does not teach measuring network performance and the total response time agent 114 is not disclosed within the traffic control apparatus. The Examiner respectfully disagrees.

Firstly, the specification (pages 17-20) defines reception performance including network performance as the total time it takes a server to send a response and for the client to receive said response. Similarly, *Klien* teaches measuring total client segment time, (the time measured from a server sending a response to till the client receives said response) as previously discussed in the previous rejection.

Secondly, the specification teaches that the client, traffic apparatus, and server can be a single apparatus (pages 10-11), therefore positioning of the client reception performance units is insignificant as no matter where said unit is placed, whether it is in an independent client, traffic apparatus, server, or a single apparatus including all 3 components, the function and predicted outcome of measuring the client reception performance is still the same.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. **Claim 1, 5-6 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Peiffer* (U.S. Patent No. 7,007,092 B2) in view of *Klein* (U.S. Patent No. 6,917,971 B1).

As to **Claims 1 and 11**, *Peiffer* discloses a traffic control apparatus (**Connection Management Device 20, Figure 1, 3-4**) for controlling traffic between a plurality of client apparatuses (**12, Figure 1, 3-4**) and a server apparatus (**Server 14, Figure 1, 3**) in a service system including the plurality of client apparatuses for issuing service requests to the server apparatus and the server apparatus for receiving the service requests from the client apparatuses to provide the service (**see figures 1, 3, 4; column 3, lines 26-33 and column 5, lines 41-5**), comprising:

a unit for relaying a service request from a client apparatus to the server apparatus (**Column 3, Lines 27-33**);

a unit for relaying a reply sent from the server apparatus to the client apparatus, the reply being a response to the relayed service request (**Column 3, Lines 27-33**);

However, although *Peiffer* discloses using client bandwidth, "client reception performance" as a performance indicator (**Column 7, Lines 19-67**) does not expressly disclose a unit for measuring reception performance of a client apparatus.

Klien, in the same field of endeavor, teaches a unit for measuring reception performance of a client apparatus (**Each interval of time, client event activation through client event completion, is measured. Figure 2; Column 7, Lines 26-54 and paragraph bridging Columns 7 and 8**).

Peiffer-Klien further teach a unit for controlling a relay of a newly received service request to the server apparatus, based on transmission performance of the server apparatus and a total of the reception performance of the client apparatuses that are being coupled to the server (**Connections to the server are managed by correlating the server response time, "transmission performance", with performance metrics such as total client bandwidth, "total reception performance". Column 7, Lines 19-67**).

At the time of invention it would have been obvious to a person of ordinary skill in the art to combine the traffic control apparatus including controlling the number of client apparatuses connected to the server using server performance as taught by *Peiffer* with using the client measuring unit as taught by *Klien* to control the number of connected clients using client performance. The motivation would have been allow the traffic control apparatus to not only to control connections based on server performance, but to control connections based on client performance in order to improve total overall system performance.

As to **Claim 5**, *Peiffer-Klien* teach the traffic control apparatus as discussed in Claim 1. *Klien* further teaches a client performance measurement unit for observing time that the client apparatus receives the service reply to calculate the data reception performance of the client apparatus (**Column 7, Lines 26-54**).

As to **Claim 6**, *Peiffer-Klien* teach the traffic control apparatus as discussed in Claim 1. *Klien* further teaches a client performance measurement unit for observing time that the server apparatus sends the service reply to calculate the data reception performance of the client apparatus (**Column 7, Lines 26-54**).

6. **Claims 3, 10, 13-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 7,007,092 B2 to *Peiffer* in view of *Klein* (U.S. Patent No. 6,917,971 B1) in further view of *Agrawal* (U.S. Patent No. 6,606,661 B1).

As to **Claim 3**, *Peiffer-Klien* teach a traffic control apparatus according to Claim 1. *Peiffer-Klien* does not expressly disclose a unit for estimating a waiting time and for sending an access restriction message.

Agrawal discloses a unit for estimating a waiting time of the reply supplied by the server apparatus (**MTBR, Column 4, Lines 50-54**); and a unit for sending an access restriction message for rejecting the request when the waiting time is longer than a fixed time (**Column 5, Lines 14-15**).

Peiffer and *Agrawal* are analogous art because they are from the same field of endeavor with respect to traffic control apparatuses.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to combine the teachings of *Peiffer* and *Agrawal* to include a unit for restricting access of the client request when the wait time is too great as. The motivation would have been to service the largest possible number of clients without running out of resources (**Column 2, Lines 34-42**).

As to **Claim 10**, *Peiffer-Klien-Agrawal* teach the traffic control apparatus as discussed in Claim 1. *Agrawal* further teaches a unit for providing a maximum processing time of the request to the client apparatus before the request is transferred to the server apparatus (**Tmax, Column 4, Lines 34-38**).

As to **Claim 13**, *Peiffer-Klien-Agrawal* teach the traffic control apparatus as discussed in Claim 11. *Agrawal* further teaches a unit for controlling an average response time to the client apparatus within a fixed time (**G(T), Column 4, Lines 18-30**).

7. **Claims 4, 7-9, and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Peiffer* (U.S. Patent No. 7,007,092 B2) in view of *Klein* (U.S. Patent No. 6,917,971 B1) and further in view of *Miyamoto* (U.S. Patent No. 6,101,542).

As to **Claim 4**, *Peiffer-Klien* teach a traffic control apparatus according to Claim 1. *Peiffer-Klien* does not expressly disclose a unit for changing priority of the requests. Miyamoto discloses a unit for changing priority used to relay the request to the server apparatus in accordance with the data reception performance of the client apparatus (**Column 10, Lines 61-64**).

Peiffer-Klien and *Miyamoto* are analogous art because they are from the same field of endeavor with respect to traffic control apparatuses.

At the time of invention, it would have been obvious to a person of ordinary skill in the art to combine the teachings of *Peiffer-Klien* and *Miyamoto* to include a unit for prioritizing client requests. The motivation would have been to match the client performance with the performance of the connection from the server apparatus (**Column 4, Lines 7-11**).

As to **Claim 7**, *Peiffer-Klien-Miyamoto* teach the traffic control apparatus as previously discussed in Claim 4. *Miyamoto* further teaches a unit for making access restriction on the request already received from the client apparatus when priority of the request received later is higher than that of the already received request (**Column 12, Lines 21-25**).

As to **Claim 8**, *Peiffer-Klien* teach the traffic control apparatus as previously discussed in Claim 1. *Miyamoto* further teaches a unit for changing priority of the

request relayed to the server apparatus in accordance with the data reception performance of the client apparatus (**Miyamoto; Column 10, Lines 61-64**).

As to **Claim 9**, *Peiffer-Klien-Miyamoto* teach the traffic control apparatus as previously discussed in Claim 8. *Miyamoto* further teaches a unit for controlling an average response time to the client apparatus within a fixed time (**Column 3, Paragraph 3-4**

As to **Claim 12**, *Peiffer-Klien* teach the traffic control apparatus as previously discussed in Claim 11. *Miyamoto* further teaches a unit for changing priority of the request relayed to the server apparatus in accordance with the data reception performance of the client apparatus (**Column 10, Lines 61-64**).

8. **Claims 16 and 17** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Peiffer* (U.S. Patent No. 7,007,092 B2) in view of *Klein* (U.S. Patent No. 6,917,971 B1) and in further view of *Szabo* (U.S. PGPub. No. 2002/0138618).

As to **Claims 16 and 17**, *Peiffer-Klein* teach the traffic control apparatus as previously discussed in Claim 1.

However, *Peiffer-Klien* do not expressly disclose wherein the controlling is based on maximum connections and current connections.

Szabo, in the same field of endeavor, teaches wherein controlling of the relay of the newly received service request to the server apparatus is further based on maximum connections and current connections (**Paragraphs 0010 and 0114**).

At the time of invention, it would have been obvious to a person of ordinary skill in the art to have combined the traffic control apparatus as taught by *Peiffer-Klien* with using maximum connections to control the relay as taught by *Szabo*. The motivation would have been to allow additional metrics to be used to improve overall performance.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT B. MCADAMS whose telephone number is (571)270-3309. The examiner can normally be reached on Monday-Thursday 5:30am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rupal Dharia can be reached on 571-272-3880. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/R. B. M./
Examiner, Art Unit 2456

/Rupal D. Dharia/
Supervisory Patent Examiner, Art
Unit 2400